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D.S., Appellant)	
)	
and)	Docket No. 16-1798
)	Issued: March 16, 2017
U.S. POSTAL SERVICE, POST OFFICE,)	
Garden City, MI, Employer)	
)	

Case Submitted on the Record

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On September 7, 2016 appellant filed a timely appeal from a May 11, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed between the last merit decision dated May 13, 2015, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

On March 5, 2015 appellant, then a 32-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that he experienced the onset of severe right heel pain earlier that day

¹ 5 U.S.C. § 8101 *et seq.*

when climbing steps to deliver mail to a house. The employing establishment completed an accident report on March 5, 2015, corroborating appellant's account of events. Appellant stopped work on the date of injury.²

In support of his claim, appellant submitted a March 5, 2015 attending physician's report (Form CA-20) from Dr. Kenneth Wilhelm, an attending Board-certified surgeon, which related appellant's account of the onset of severe right heel and ankle pain while walking up steps that day. Dr. Wilhelm diagnosed right Achilles tendinitis. He checked a box marked "yes" on the form report that appellant's condition was caused or aggravated by work activity. Dr. Wilhelm prescribed a nonweight-bearing boot.

Dr. Anna Jonascu-Devine, an attending physician, Board-certified in emergency medicine, provided reports from March 10 to 24, 2015, diagnosing right Achilles tendinitis and noting work restrictions. Dr. Linda V. Thomas, an attending osteopathic physician, specializing in emergency medicine, provided work restrictions from March 13 to 24, 2015. Appellant also submitted physical therapy notes dated from March 10 to 24, 2015.

In an April 10, 2015 letter, OWCP advised appellant of the additional evidence needed to establish his claim, including a report from his attending physician diagnosing an injury related to the March 5, 2015 incident, and explaining how climbing stairs would cause that injury. Appellant was afforded 30 days to submit such evidence.

In response, appellant submitted an April 1, 2015 magnetic resonance imaging (MRI) scan of the right ankle, demonstrating mild Achilles tendinitis.

By decision dated May 13, 2015, OWCP accepted that the March 5, 2015 incident occurred at the time, place, and in the manner alleged, but continued to deny the claim, finding that the medical evidence of record did not establish causal relationship.

In a letter dated and postmarked June 12, 2015, appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. He submitted a June 15, 2015 report from Dr. Wilhelm, noting that on March 5, 2015 appellant reported severe posterior ankle pain while climbing stairs delivering mail, and that he was unable to bear weight on his right foot.

By decision dated July 14, 2015, OWCP's Branch of Hearings and Review denied appellant's request for a review of the written record, finding that it was untimely filed. It performed a brief review of the evidence and exercised its discretion, finding that appellant's request for a review of the written record could be addressed equally well by submitting new, relevant evidence accompanying a valid request for reconsideration.

On February 11, 2016 appellant requested reconsideration. He did not submit additional evidence or argument.

² In a March 18, 2015 form, the employing establishment noted that there was no work available within appellant's medical restrictions. It is not clear from the record if and when appellant returned to work.

By nonmerit decision dated May 11, 2016, OWCP denied reconsideration, finding that appellant did not raise substantive legal questions or include new, relevant evidence.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ section 10.606(b)(3) of Title 20 of the Code of Federal Regulations provides that a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.⁴ Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁵

In support of a request for reconsideration, an appellant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.⁶ Appellant need only submit relevant, pertinent evidence not previously considered by OWCP.⁷ When reviewing an OWCP decision denying a merit review, the function of the Board is to determine whether OWCP properly applied the standards set forth at section 10.606(b)(3) to the claimant's application for reconsideration and any evidence submitted in support thereof.⁸

ANALYSIS

Appellant alleged that he sustained a left heel or ankle injury on March 5, 2015 while climbing steps on his delivery route. OWCP accepted that this incident took place at the time, place, and in the manner alleged, but denied the claim on May 13, 2015 as the medical evidence failed to establish a causal relationship between climbing steps and the alleged injury. Appellant requested a review of the written record which was denied by decision dated July 14, 2015. In a February 11, 2016 letter, he requested reconsideration. OWCP denied reconsideration by decision dated May 11, 2016, finding appellant's letter was insufficient to warrant a merit review.

The relevant issue before OWCP at the time it issued the May 13, 2015 merit decision was whether appellant had submitted sufficient medical evidence to establish a causal relationship between climbing steps on March 5, 2015 and the claimed left heel or ankle injury. To be relevant, any medical evidence submitted after the May 13, 2015 decision must be pertinent and new and address causal relationship. On June 22, 2015 appellant submitted a

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(3).

⁵ *Id.* at § 10.608(b). *See also D.E.*, 59 ECAB 438 (2008).

⁶ *Helen E. Tschantz*, 39 ECAB 1382 (1988).

⁷ *See* 20 C.F.R. § 10.606(b)(3). *See also Mark H. Dever*, 53 ECAB 710 (2002).

⁸ *Annette Louise*, 54 ECAB 783 (2003).

June 15, 2015 report from Dr. Wilhelm, an attending Board-certified surgeon, recalling that appellant presented on March 5, 2015 complaining of the onset of severe posterior ankle pain that day while climbing stairs delivering mail. This report, while new to the record, is not relevant as it addresses causal relationship in a similar manner as Dr. Wilhelm's March 5, 2015 report. Dr. Wilhelm did not offer any new reasoning for his opinion on causal relationship. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁹ The Board finds that appellant's request for reconsideration is insufficient to warrant a merit review as appellant did not show that OWCP erroneously applied or interpreted a point of law, advance any legal arguments not previously considered, or provide any pertinent new and relevant evidence with the request. Therefore, pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 11, 2016 is affirmed.

Issued: March 16, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

⁹ *L.T.*, Docket No. 09-1798 (issued August 5, 2010).